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**STATEMENT OF MR. HILARY O. SHELTON  
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BEFORE THE HOUSE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON THE CONSTITUTION**

**“The Supreme Court’s Kelo Decision and Potential Congressional Response”**

*September 22, 2005*

Thank you, Chairman Chabot, Ranking Member Nadler and ladies and gentlemen of the panel for inviting me here today to talk about property rights in a post-Kelo world.

My name is Hilary Shelton and I am the Director of the Washington Bureau for the National Association for the Advancement of Colored People, our Nation’s oldest, largest and most widely recognized civil rights organization. We currently have more than 2,200 units in every state in our country.

Given our Nation’s sorry history of racism, bigotry, and a basic disregard on the part of too many elected and appointed officials to the concerns and rights of racial and ethnic minority Americans, it should come as no surprise that the NAACP was very disappointed by the Kelo decision. In fact, we were one of several groups to file an Amicus Brief with the Supreme Court in support of the New London, Connecticut homeowners.<sup>1</sup>

Racial and ethnic minorities are not just affected more often by the exercise of eminent domain power, but we are almost always affected differently and more profoundly. The expansion of eminent domain to allow the government or its designee to take property simply by

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<sup>1</sup> The NAACP would like to offer our sincere gratitude and appreciation to the law firm of Bondurant, Mixson & Elmore, LLP, of Atlanta, Georgia, for their invaluable assistance in preparing the brief.

asserting that it can put the property to a higher use will systemically sanction transfers from those with less resources to those with more.

The history of eminent domain is rife with abuse specifically targeting racial and ethnic minority and poor neighborhoods. Indeed, the displacement of African Americans and urban renewal projects are so intertwined that “urban renewal” was often referred to as “Black Removal.” The vast disparities of African Americans or other racial or ethnic minorities that have been removed from their homes due to eminent domain actions are well documented.

A 2004 study estimated that 1,600 African American neighborhoods were destroyed by municipal projects in Los Angeles<sup>2</sup>. In San Jose, California, 95% of the properties targeted for economic redevelopment are Hispanic or Asian-owned, despite the fact that only 30% of businesses in that area are owned by racial or ethnic minorities<sup>3</sup>. In Mt. Holly Township, New Jersey, officials have targeted for economic redevelopment a neighborhood in which the percentage of African American residents, 44%, is twice that of the entire township and nearly triple that of Burlington County. Lastly, according to a 1989 study 90% of the 10,000 families displaced by highway projects in Baltimore were African Americans<sup>4</sup>. For the committee’s information, I am attaching to this testimony a document that outlines some of the higher-profile current eminent domain cases involving African Americans.

The motives behind the disparities are varied. Many of the studies I mentioned in the previous paragraph contend that the goal of many of these displacements is to segregate and maintain the isolation of poor, minority and otherwise outcast populations. Furthermore, condemnations in low-income or predominantly minority neighborhoods are often easier to accomplish because these groups are less likely, or often unable, to contest the action either politically or in our Nation’s courts.

Lastly, municipalities often look for areas with low property values when deciding where to pursue redevelopment projects because it costs the condemning authority less and thus the state or local government gains more, financially, when they replace areas of low property values with

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<sup>2</sup> Mindy Thompson Fullilove, *Root Shock: How Tearing Up City Neighborhoods Hurts America, and What We Can Do About It*, p.17

<sup>3</sup> Derek Werner: Note: *The Public Use Clause, Common Sense and Takings*, pp 335-350), 2001

<sup>4</sup> Bernard J. Frieden & Lynn B. Sagalyn, *Downtown, Inc.: How America Rebuilds Cities*, p.29

those with higher property values. Thus, even if you dismiss all other motivations, allowing municipalities to pursue eminent domain for private development as was upheld by the US Supreme Court in *Kelo* will clearly have a disparate impact on African Americans and other racial and ethnic minorities in our country.

As I said at the beginning of my testimony, not only are African Americans and other racial and ethnic minorities more likely to be subject to eminent domain, but the negative impact of these takings on these men, women and families is much greater.

First, the term “just compensation”, when used in eminent domain cases, is almost always a misnomer. The fact that a particular property is identified and designated for “economic development” almost certainly means that the market is currently undervaluing that property or that the property has some “trapped” value that the market is not yet recognizing.

Moreover, when an area is taken for “economic development,” low-income families are driven out of their communities and find that they cannot afford to live in the “revitalized” neighborhoods; the remaining “affordable” housing in the area is almost certain to become less so. When the goal is to increase the area’s tax base, it only makes sense that the previous low-income residents will not be able to remain in the area. This is borne out not only by common sense, but also by statistics: one study for the mid-1980’s showed that 86% of those relocated by an exercise of the eminent domain power were paying more rent at their new residences, with the median rent almost doubling<sup>5</sup>.

Furthermore, to the extent that such exercise of the takings power is more likely to occur in areas with significant racial and ethnic minority populations, and even assuming a proper motive on the part of the government, the effect will likely be to upset organized minority communities. This dispersion both eliminates, or at the very least drastically undermines, established community support mechanisms and has a deleterious effect on these groups’ ability to exercise what little political power they may have established. In fact, the very threat of such takings will also hinder the development of stronger ethnic and racial minority communities. The incentive to invest in one’s community,

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<sup>5</sup> Herbert J. Gans, *The Urban Villagers: Group and Class in the life of Italian Americans*, p.380

financially and otherwise, directly correlates with confidence in one's ability to realize the fruits of such efforts. By broadening the permissible uses of eminent domain in a way that is not limited by specific criteria, many minority neighborhoods will be at increased risk of having property taken. Individuals in those areas will thus have even less incentive to engage in community-building and improvement for fear that such efforts will be wasted.

In conclusion, allow me to reiterate the concerns of the NAACP that the Kelo decision will prove to be especially harmful to African Americans and other racial and ethnic minority Americans. By allowing pure economic development motives to constitute public use for eminent domain purposes, state and local governments will now infringe on the property rights of those with less economic and political power with more regularity. And, as I have testified today, these groups, low-income Americans, and a disparate number of African Americans and other racial and ethnic minority Americans, are the least able to bear this burden.

Thank you again, Chairman Chabot, Ranking Member Nadler and members of the subcommittee, for allowing me to testify before you today about the NAACP position on eminent domain and the post-Kelo landscape. The NAACP stands ready to work with the Congress and state and local municipalities to develop legislation to end eminent domain abuse while focusing on real community development concerns like building safe, clean and affordable housing in established communities with good schools, an effective health care system, small business development and a significant available living wage job pool.

## African-Americans threatened by eminent domain

*Boynton Beach, Florida* - The Heart of Boynton plan is the second stage of the city's five-part redevelopment, and involves clearing out long-time businesses, homes, and churches in a mostly-black, low-income neighborhood in order to replace them with unsurprisingly - different businesses and other residences, but no churches.

On February 20, 2003, the Community Redevelopment Agency decided to hire a contractor to start buying out stores and churches in the area. The city and the CRA wanted to raze the 4.7 -acre area surrounding the intersection of Seacrest and Martin Luther King Jr. boulevards to build new houses, stores, and expand a park. They targeted at least 26 commercial properties, two churches, and a 5.3-acre area of 42 homes west of Seacrest Boulevard. The director of the CRA told the city council that the reason he supported condemning the largely black neighborhood was "to compensate for the loss of one of the city's major taxpayers. Our property tax values are meager compared to other cities and

this redevelopment is our attempt to enhance property values within this City."

*Jackson, Mississippi* - In order to revitalize the area around its campus, historically black Jackson State University decided in January 2004 to seize 15 surrounding properties through eminent domain. The area in which the condemnations took place has traditionally been one of the most vibrant African-American communities in the south, in terms of both economic might and strength in the civil rights movement. The new development, which will displace all of this, will include retail stores and restaurants. One of the property owners, Milton Chambliss, vigorously protested the taking of his property, but was soon appointed thereafter as the chair of the JSU e-City Historic Preservation Committee.

*Camden, New Jersey* - The majority black and Hispanic residents of the Cramer Hill neighborhood were granted a reprieve in May 2005 by a Superior Court judge from plans to replace 1,100 families with more expensive housing for wealthier buyers. Cherokee Investment Partners, in collusion with city officials, intends to build 6,000 homes and a golf course, and has drawn the ire of community residents and businesspeople. Equally unacceptable to the community, another private group, Michaels Development Co., had planned to build 162 "affordable housing" units in the neighborhood for residents displaced by Cherokee's proposed construction. In August 2005, an Appellate Division judge denied Michaels permission to move forward despite litigation on behalf of Camden residents.

*Lawnside, New Jersey* - On May 9, 2005, the Lawnside planning board voted to recommend to the city council a redevelopment plan for 120 acres on the borough's northeast side. The plan, which could affect up to 20 families, still needs the approval of the city council at its next meeting. Most of the residents learned about the plan only two weeks before the planning board decided to recommend it, and are not pleased with the lack of notification. "We're pretty happy with the lives we've carved out for ourselves," said Willa Coletrane of Everett Avenue. "We of the community had no input." Lawnside has been the site of a distinct African-American community since the late 1700s, and was a stop on the Underground Railroad. Many of the residents who have lived in Lawnside their entire lives feel betrayed by the government's rush to redevelop the neighborhood they hold so close to their hearts.

*Mount Holly, New Jersey* - The original redevelopment plan in Mount Holly called for the demolition of all 379 houses in the largely black and Latino neighborhood. The area would be cleared as part of the proposed commercial component of the larger West Rancocas Redevelopment Plan that also calls for 228 new residential units. Citizens in Action - a group of affected residents in the area - filed a racial discrimination lawsuit against the township in an effort to halt demolition of their homes. A Superior Court judge recently ruled against the suit that the plan discriminates against the minority population.

*Albany, New York* - Residents of the majority African-American Park South neighborhood are awaiting the possible condemnation of their properties for one of the most excessive redevelopment plans in Albany since the 1960s. Park South is a nineblock, 26-acre neighborhood in Albany between Washington Park and Albany Medical Center. In March 2005, the city council voted to designate Park South as an urban renewal area, paving the way for the use of eminent domain to acquire properties for a future redevelopment project. The city wants to replace approximately 1,900 residents with a mix of office and retail space, apartments, homes, and housing for up to 400 students, but exact plans will not be nailed down until city officials pick a developer which they did in June 2005. Morris Street resident Velma McCargo considered the city's redevelopment aspirations a "cheap trick" by city officials to get properties that have suffered from blight at particularly low

costs. And some African-American activists like Aaron Mair believe that the Park South plan is just a pretext to relocate poor minority residents and gentrify the area into a place for middle-class whites.

**New York City, New York** - In April 2004, Columbia University announced plans to expand into Manhattanville and develop a campus on an 18-acre area between 125th and 133rd streets, from Broadway to 12th Avenue. While Columbia insists that the \$5 billion expansion plan would spur economic development in West Harlem, property owners fear the imminent bulldozing of their homes and businesses. Since the school only owns 42% of the property in the proposed expansion area, Columbia and the Empire State Development Corporation entered into an agreement that they did not publicize providing for the potential condemnations of properties in the project path, with the University putting \$300,006 into an interest-bearing account that the city may withdraw from to cover the acquisition of properties. The public eventually discovered that the agreement existed, and was enraged. As for the possibility of considering the Manhattanville properties blighted, Community Board 9 chairman Jordi ReyesMontblanc said that the only property in Manhattanville that could be considered blighted is Columbia-owned property, which "has been vacant and decaying for years."

**Washington, D.C.** - The city is using eminent domain to replace the Skyland Shopping Center, a fully leased and thriving 1940s-era shopping center serving the working class residents of Southeast D.C., with an upscale shopping center anchored by a Target store. Yet Target has yet to express any interest in locating a store there. The National Capital Revitalization Corp. plans to condemn the 16 property owners for the private development.

One of the shopping center owners is an African-American couple whose business in northeastern D.C. was burned down in the 1968 riots; they moved to Skyland a short time later, worked hard, and prospered. Another family bought their share of the shopping center in the 1940's and poured millions into their property. But to the D.C. Council, Skyland is just a "slum" that must be seized, razed, and handed over to the highest bidder.

**Beloit, Wisconsin** - At the turn of the twentieth century, a large contingent of AfricanAmerican workers migrated to Beloit from Mississippi. Working at the FairbanksMorse factory, these laborers exclusively settled into Fairbanks Flats, a low-income housing project built on a nine-block swath of land. Now, it seems that the flats might have to make way for a planned development project undertaken by the Beloit City Council and National Trust consultants. Beloit plans to raze the apartments if its tenants cannot come up with a plan within a few months. The proposed redevelopment would include boutiques, restaurants, and other businesses.